

# CITY COUNCIL REPORT



Meeting Date: March 1, 2022  
General Plan Element: *Provide for the orderly administration of the affairs of the City*  
General Plan Goal: *Fiscal management*

## **ACTION**

**Adopt Resolution No. 12414, authorizing Agreement No. 2022-033-COS with Plaintiffs William Titus and Angela Titus in the amount of \$125,000 to settle *Titus, et. al. v. City of Scottsdale*, Case No. CV2019-015124, currently pending in the Maricopa County Superior Court.**

## **Background**

This lawsuit stems from a motor vehicle accident which occurred on December 3, 2018, at the intersection of 68<sup>th</sup> Street and East McDowell Road in Scottsdale, Arizona between vehicles driven by Plaintiff William Titus and a Scottsdale Police Officer. Plaintiffs allege that the Officer made a left turn in front of the Plaintiff on a red light causing the accident. The Officer was not in a standard marked police vehicle and only had on his lights with no siren while trying to catch up to another vehicle for a traffic violation. The Officer's vehicle collided with Plaintiff's vehicle and Mr. Titus was treated immediately and transported to the hospital. Plaintiffs allege that Mr. Titus' sustained significant injuries and incurred medical bills totaling \$62,637. Mr. Titus also claims he needs future medical care in excess of \$485,000 as a result of the injuries he suffered during the collision. Plaintiffs further alleged a wage loss claim for Mr. Titus and a property loss claim from the accident. Plaintiffs filed a Notice of Claim demanding \$275,000 to settle the claim which was filed before Mr. Titus knew the full amount of his claims for future medical treatment. Thereafter, Plaintiffs filed a lawsuit against the City of Scottsdale.

Given that the Officer entered the intersection on a red light, the City has and will focus the defense of this case on the Plaintiffs' inflated damages claims. The Plaintiffs are expected to ask a jury for upwards of \$900,000 in money damages. Although the City has several damages defenses, including its own expert analysis, to rebut a good portion of Plaintiffs' high damage claims, there is a fair risk that the jury would award a higher verdict than the proposed settlement under these circumstances.

The parties engaged in a formal mediation with an independent mediator on February 14, 2022. Prior to mediation, Plaintiffs raised their demand for settlement to \$675,000. Regardless, the parties were able to reach a proposed settlement value of \$125,000 during the

lengthy mediation. This proposed settlement is subject to Council approval and would resolve the entirety of the lawsuit, including all related fees and costs.

City staff is recommending that the City Council approve this settlement because the cost, uncertainty and risk of going forward to trial in this case far outweighs the amount of the negotiated settlement.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

The matter is being defended in-house by the City Attorney's Office in collaboration with the Risk Management Department. The City Attorney's Office has worked to defend this case and has reviewed the evidence surrounding the Plaintiffs' claims. The City Attorney's Office has worked closely with the City Treasurer and the Scottsdale Police Department regarding this potential settlement. All recommend this settlement as being in the best interests of the City, in part because it will avoid additional substantial costs of litigation and eliminate the risk and uncertainties inherent in going to trial.

### **Policy Implications**

None.

### **Significant Issues to be Addressed**

Given the risk of litigation and the additional costs of moving forward to a trial, the City Attorney's Office and Risk Management Department believe a settlement amount of \$125,000 is in the best interests of the City. Settlement of this action will resolve the uncertainty of litigation. If the settlement is not approved, the matter will be set for trial and a substantial commitment of additional City resources will be necessary to continue defense of the case. In addition, the City will incur significant additional expenditures for expert witnesses that have been retained or will need to be retained to assist with the defense.

### **Community Involvement**

No community involvement is necessary on this item as this matter is in litigation

## **RESOURCE IMPACTS**

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### **Available funding**

Funding is available in the Risk Management operating budget. If the settlement is denied, the City will likely spend an additional \$120,000 or more in costs and attorneys' fees in the defense of this case through trial

### **Staffing, Workload Impact**

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Approval of the proposed settlement brings this litigation to a conclusion and will eliminate the need for staff resources from the City Attorney's Office, Risk Management and other Departments to be spent on this case, as well as eliminating the risk and uncertainty of litigation.

### **Future Budget Implications**

The proposed settlement of \$125,000.00 may be included in the City's primary property tax rate for the next year. The eligibility of settlement and judgment payments for possible inclusion in the City's primary property tax rate is based upon an Arizona Attorney General opinion. The City of Scottsdale has a long-standing practice of including paid tort settlements equal to or greater than \$20,000.00 in the City's primary tax rate to reimburse the Self-Insured Fund for payment of the claim.

### **Cost Recovery Options**

None.

## **OPTIONS & STAFF RECOMMENDATION**

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### **Recommended Approach**

Adopt Resolution No. 12414 and authorize settlement and release of this litigation in the amount of \$125,000 as proposed. City staff is recommending that the City Council approve this settlement because the cost, uncertainty and risk of going forward to trial in this case outweigh the amount of the negotiated settlement.

### **Proposed Next Steps**

If the settlement is approved, City representative(s) will execute settlement documents as proposed and the City will pay the settlement amount within a reasonable time thereafter.

## **RESPONSIBLE DEPARTMENT(S)**

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City Attorney's Office – Civil Division  
Risk Management

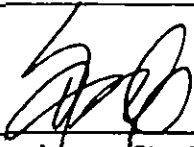
## **STAFF CONTACTS (S)**

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Sherry R. Scott, City Attorney, [SScott@ScottsdaleAZ.gov](mailto:SScott@ScottsdaleAZ.gov)  
George Woods, Risk Management Director, [gwoods@scottsdaleaz.gov](mailto:gwoods@scottsdaleaz.gov)


## **APPROVED BY**

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Sonia Andrews, City Treasurer  
(480) 312-2364  
[SAndrews@ScottsdaleAZ.gov](mailto:SAndrews@ScottsdaleAZ.gov)

2/15/2022  
Date



Sherry R. Scott, City Attorney  
(480) 312-2405  
[SScott@ScottsdaleAZ.gov](mailto:SScott@ScottsdaleAZ.gov)

2-15-2022  
Date

## ATTACHMENTS

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1. Resolution No. 12414
2. Agreement No. 2022-033-COS

**RESOLUTION NO. 12414**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE,  
MARICOPA COUNTY, ARIZONA, CONCERNING TITUS, ET. AL. v. CITY OF  
SCOTTSDALE, CAUSE NO. CV2019-015124, CURRENTLY PENDING IN  
MARICOPA COUNTY SUPERIOR COURT**

WHEREAS, William Titus and Angela Titus filed suit against the City of Scottsdale seeking to recover monetary damages for injuries resulting from a motor vehicle accident involving William Titus which occurred at the intersection of 68<sup>th</sup> Street and East McDowell Road in Scottsdale, Arizona on or about December 3, 2018; and

WHEREAS, the City has decided to resolve the disputed issues and compromise the claims by settling herein; and

WHEREAS, it is in the best interest of the City to effectuate a settlement of the matter of *TITUS, ET. AL v. CITY OF SCOTTSDALE*, Maricopa County Superior Court Case No. CV2019-015124.

NOW, THEREFORE, BE IT RESOLVED, by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That the City Council authorizes the Mayor to execute Agreement No. 2022-033-COS on behalf of the City to settle this case in its entirety in the sum of \$125,000 from funds to be paid from the City's Risk Management Operating Budget for settlement of *TITUS, ET. AL. v. CITY OF SCOTTSDALE*, Maricopa County Superior Court Case No. CV2019-015124.

Section 2. That the City Manager, City Treasurer, the City Attorney, and their respective staffs are authorized and directed to obtain a standard release of claims and to execute such documents and take such other actions as are necessary to carry out the purpose of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Ben Lane, City Clerk

By: \_\_\_\_\_  
David D. Ortega, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By:  \_\_\_\_\_  
Sherry R. Scott, City Attorney

**SETTLEMENT AGREEMENT  
AND GENERAL RELEASE**

This Settlement Agreement and General Release of All Claims ("Agreement") is entered into by and between WILLIAM TITUS and ANGELA TITUS ("Plaintiffs") and the CITY OF SCOTTSDALE, a municipal corporation, its employees, officers, and agents including, but not limited to, OFFICER BENJAMIN ROBERSON (Badge Number 515) (the City and its employees, named and unnamed, collectively known as "City"). Plaintiffs and City may be referred to jointly as the "Parties".

**RECITALS**

A. On or about December 3, 2018, Plaintiff William Titus alleges that he sustained injuries when he was involved in a motor vehicle accident at the intersection of 68th Street and East McDowell Road in Scottsdale, Arizona which he alleges was caused by Officer Roberson's negligence.

B. Plaintiffs filed a lawsuit against the City in the Superior Court of Maricopa County, Arizona, entitled *William Titus, et. al. v. City of Scottsdale*, Case No. CV2019-015124 alleging negligence and damages arising from the accident.

C. Despite the fact that liability has not been admitted regarding the claim asserted by Plaintiffs and the fact that this remains a disputed claim, Plaintiffs desire to finally and fully resolve all past, present, and potential disputes, claims, and issues as between the Parties relating to or arising out of Plaintiff William Titus' accident and the facts and circumstances that gave rise to the Plaintiffs' alleged injuries. The Plaintiffs and the City desire to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation. This Agreement is intended to resolve any dispute which may exist between the Parties. The Plaintiffs intend to

execute this Agreement in order to provide for certain payment in full settlement and discharge of all claims which are, or might have been, brought against the City as a result of the Plaintiffs' accident and claims, upon the terms and conditions set forth below.

### **AGREEMENT**

In consideration of the promises and releases set forth herein, the Parties agree as follows:

1. *Settlement Payment.* The total payment by the City for the settlement of this claim shall be ONE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS and 00/100 (\$125,000) which includes any and all claims for costs and attorneys' fees, with the payment to be made to "William Titus and Angela Titus and Brett L Slavicek PC". Plaintiffs acknowledge and agrees that this settlement payment is the full and entire amount that Plaintiffs will ever receive from the City in connection with the claim described above. If Plaintiffs are or were represented by counsel, Plaintiffs acknowledge that any fees due to such counsel shall be Plaintiffs' responsibility and the City will have no further obligation to pay such sums beyond the amount identified above.

2. *All Claims of Any Kind.* In consideration for the terms and promises herein, Plaintiffs hereby fully and generally release and forever discharges the City, its officers, employees and agents, from any and all claims or liabilities of any nature whatsoever to the extent allowed by law that Plaintiffs have or claims to have, or may have, against any of them arising out of Plaintiffs' accident including any expenses and attorneys' fees, regardless of whether or not such claims or liabilities are known to the Parties at the time of the execution of this Agreement. Plaintiffs intend by the execution of this Agreement to release all claims against the City and its employees, officers, and agents including any unknown damages and/or injuries.

3. *No Admission of Liability.* It is understood and expressly agreed that neither the payment of the Settlement Payment nor anything contained within this Agreement shall be construed as an admission of any liability whatsoever on the part of the City which has always and is now expressly denying any liability. The Parties acknowledge and agree that the Settlement Payment is made in compromise and settlement of a disputed claim.

4. *Liens.* Plaintiffs warrant that Plaintiffs will satisfy any and all valid liens, including, but not limited to, ERISA liens, Medicare or Medicaid liens, liens pursuant to A.R.S. § 33-931 et seq., liens falling under the rubric of *Andrews v. Samaritan Health System*, 201 Ariz. 379, 36 P.3d 57 (App. 2001); *Blankenbaker v. Jonovich*, 205, Ariz. 383, 71 P.3d 910 (Ariz. 2003); *Maricopa County v. Barfield*, 75 P.3d 714 (App. 2003). Plaintiffs will indemnify and hold harmless the City, its employees, officers, agents and representatives, from any and all claims, demands, actions and causes of action, and all liability whatsoever, including, but not limited to costs, attorneys' fees or judgment which might arise from an unpaid or unsatisfied hospital or medical bill and/or lien or lien of any other kind which might apply to the proceeds paid herein.

5. *Indemnify and Hold Harmless.* Plaintiffs do hereby covenant to indemnify and save harmless the City from and against all claims and demands whatsoever on account of or in any way growing out of said occurrence or its results both to person and property.

6. *General Release.* Plaintiffs acknowledge and agree that this is a General Release. The Plaintiffs expressly waive and assume the risk of any and all claims for damages which exist of this date, but of which the Plaintiffs does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Plaintiffs' decision to execute this Release. The Plaintiffs further agree that Plaintiffs have



accepted payment of the sum specified herein as a complete settlement and compromise of matters involving disputed issues of law and fact. The Plaintiffs assume the risk that the facts or law may be other than Plaintiffs believe. The Plaintiffs understand and agrees that this Agreement is a compromise of disputed claim, and the Settlement Payment is not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied.

7. *Review of Agreement.* The Plaintiffs declare and represents that no promise, inducement or agreement not herein expressed has been made to the Plaintiffs and the terms of this Agreement are contractual and not a mere recital. The Parties expressly acknowledge that they have entered this Agreement knowingly and voluntarily and that each party has had the opportunity to receive the advice of counsel with respect to the Agreement and the settlement of this matter.

8. *Binding Nature of Agreement; Assignment.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns, except that no party may assign, delegate or transfer any of its rights or obligations under this Agreement without prior written consent of the other party.

9. *Arizona Law.* In the event of any dispute arising from the terms of this Agreement, Arizona law shall apply and govern.

10. *Dismissal with Prejudice.* The Parties shall, as soon as practicable after the execution of this Agreement and receipt of the payment described above, execute a stipulation to dismiss with prejudice the lawsuit entitled *William Titus, et. al. v. City of Scottsdale*, Case No. CV2019-015124 now pending in the Superior Court of Maricopa County, Arizona, with each party to bear their own costs and attorneys' fees.

11. *Entire Agreement.* This Agreement constitutes the entire integrated agreement between the Parties and supersedes any and all prior and/or contemporaneous agreements, promises, representations, negotiations, statements and/or understandings of the Parties.

12. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, I have hereunder set my hand this \_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
William Titus, Plaintiff

SUBSCRIBED AND SWORN before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by William Titus.

By: \_\_\_\_\_  
Notary Public

My Commission Expires

IN WITNESS WHEREOF, I have hereunder set my hand this \_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
Angela Titus, Plaintiff

SUBSCRIBED AND SWORN before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by Angela Titus.

By: \_\_\_\_\_  
Notary Public

My Commission Expires

APPROVED AS TO FORM:  
THE SLAVICEK LAW FIRM

By: \_\_\_\_\_  
Brett L. Slavicek, Esq.  
5500 N. 24<sup>th</sup> Street  
Phoenix, Arizona 85016  
Attorneys for Plaintiffs

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

By: \_\_\_\_\_  
David D. Ortega  
Mayor, City of Scottsdale

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ben Lane, City Clerk

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: Lori S. Davis, Deputy City Attorney

Dated: 2/16/2022